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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-third session

SUMMARY RECORD OF THE 1285th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 10 August 1998, at 10 a.m.

Chairman: Mr. ABOUL-NASR

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GE.98-17551 (E)

The meeting was called to order at 10.15 a.m.

SOLEMN DECLARATION BY A RE-ELECTED MEMBER OF THE COMMITTEE UNDER RULE 14 OF THE RULES OF PROCEDURE

1. In accordance with rule 14 of the rules of procedure, Mr. WOLFRUM, re-elected a member of the Committee, made the following solemn declaration:

> "I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Elimination of Racial Discrimination honourably, faithfully, impartially and conscientiously".

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Review of the implementation of the Convention in Haiti

2. The CHAIRMAN said that in the absence of the overdue tenth to thirteenth periodic reports from Haiti and the Haitian mission's failure to reply to an invitation to attend the meeting, the Committee had no choice but to review the situation on the basis of previous reports and information to be given by the Country Rapporteur.

3. Mr. RECHETOV observed that, as a matter of procedure in similar circumstances, the secretariat should continue to endeavour to have a representative of the mission in question attend such meetings, for their reactions were always useful.

4. Mr. LECHUGA HEVIA (Country Rapporteur), noting that Haiti had last submitted a periodic report in 1990, observed that the still unstable political situation in the country was compounded by a continuing economic and social crisis, Haiti being, according to the World Bank, the poorest country in the Western Hemisphere, with the richest 1 per cent of the population holding 44 per cent of national income.

5. Many factors were preventing Haiti from achieving better living standards for its people after so many years of repression, corruption and exploitation. Health care was woefully inadequate, with primary health care available to under 50 per cent of the population, a very high infant mortality rate and 50 to 70 per cent of health services concentrated in the capital in a country with a 70 per cent rural population. The gross national product has fallen a further 30 per cent in the previous decade. Life expectancy was 57 and the illiteracy rate 60 per cent in an overwhelmingly young population - 95 per cent of which was of African descent. Creole - the language of 80 per cent of the population - had now been made an official language, along with French, but was not used in most official documents or in court proceedings, and the inability of most of the population to speak French also limited its economic and political advancement.

6. Some progress had been made towards democratization and the establishment of institutions to safeguard human rights. However, the extent of the other problems - political violence, a weak judiciary, growing crime, impunity for political crimes, the economic crisis, the power of the

privileged few - bringing in their wake human rights violations of all kinds, distracted attention from racial discrimination and the relations between the black, mulatto and white populations. The 1987 Constitution did not specifically prohibit discrimination on the grounds of race, sex, religion, language, social status or physical or mental disability, although it did stipulate equal employment opportunity regardless of sex, religious belief or marital status, without, however, having set up any implementing government machinery. There was, for instance no legislation implementing article 4 of the Convention. There was a 1982 decree harmonizing penal law with international treaties to which Haiti was a party, but the Government had taken the position that there was no need to adopt further legislative or other measures because of the absence of racial discrimination or racist organizations or propaganda in the country.

7. Generally, any discrimination that did in fact occur was on the grounds of cultural identification, colour or social class. Moreover, women, especially rural women, did not have equal opportunities and hundreds of thousands of children worked in virtual slavery as exploited domestic servants.

8. The current Government of President Préval - the first democratically elected administration to succeed another, that of President Aristide - had since 1996 been trying to restore normalcy on the basis of the 1987 Constitution, which had never been fully implemented. It was impossible, however, to do away quickly with the legacy of so many years of bloody repression and arbitrariness, foreign military occupation, successive coups d'état, a perennial political crisis, economic and trade embargoes and consequent deprivation, affecting the most disadvantaged sectors. There had nonetheless been encouraging signs in 1998, confirmed by the General Assembly on several occasions, that the human rights situation in Haiti was improving. The Government had issued a declaration of principles expressing its determination to respect human rights and assume its responsibilities; the two United Nations missions in Haiti had achieved good results in reforming institutions and particularly in training a new police force; and valuable work had been done by the then Centre for Human Rights in assisting with the revision of laws and the training of magistrates.

9. The independent expert of the Commission on Human Rights had expressed concern about Haiti's democratic development, the weakness of the judiciary, overcrowding in prisons, social and economic conditions and the observance of basic human rights in his report (E/CN.4/1997/89), but had concluded that the situation of civil and political rights, at least, had improved considerably. Currently, a split in the Lavalas Movement, whose representatives had been voted into power twice, was complicating the political scene, creating disturbances and shaking the confidence of voters.

10. It was difficult to assess the implementation of the rights covered by the Convention for lack of up-to-date information on the demographic composition of the country, the social benefits enjoyed by the various social groups and the relations between the black, white and mulatto populations.

11. He hoped the Government would respond in its next report to all the concerns raised in the various intervening reports concerning Haiti and give

its version of the events of the last eight years, during which its situation had definitely improved. The Office of the United Nations High Commissioner for Human Rights could very usefully offer technical advisory services for the preparation of periodic reports should the Government so wish.

12. Mr. VALENCIA RODRIGUEZ said that there were still fundamental problems making it very hard for the Government to ensure the protection and enjoyment of human rights, including freedom from racial discrimination. The political situation, though no longer as chaotic as it once had been, was still highly unstable despite steps taken by the Government to improve it. The dire economic situation of Haiti remained a constant factor of instability. The glaring social inequalities, exploitation and corruption needed no comment. The population's extremely low literacy rate was another barrier to the enjoyment of human rights.

13. Haiti now needed more international cooperation in all fields and a United Nations presence was indispensable. The Committee must recommend that the Government should continue working with the Office of the United Nations High Commissioner for Human Rights to draw up the legislative, administrative and judicial measures that were imperative for compliance with the Convention.

14. Mr. de GOUTTES said that the Committee must, while bearing in mind the exceptional difficulties facing Haiti, remind the Government that it should take advantage of the advisory services provided by the Office of the United Nations High Commissioner to help it to comply with its reporting obligations.

15. In addition to the points mentioned by Mr. Lechuga Hevia, he would like more information about the steps taken by the Government to implement the recommendations of the National Commission of Truth and Justice regarding the need to reform the judicial system, the police force and the penitentiary system and to provide reparation to the victims of human rights violations committed by the Cédras Government and the two elected Governments and still being committed by the new and supposedly reformed Haitian National Police. Too few of those responsible for the violations - especially police officers - were being held to account. The Government was not doing enough in the battle against impunity.

16. The Government should also provide a specific assessment of what had been done in the area of human rights education with the assistance of the then Centre for Human Rights and now the Office of the United Nations High Commissioner.

17. Mr. YUTZIS observed that when the United Nations had intervened in Haiti, the country had been on the verge of dissolution as a State, and it was still now paying a high price for its history. He agreed that Haiti needed logistical support and assistance from the United Nations in monitoring the situation. The Chairman should ask the High Commissioner to provide any assistance the Government requested.

18. The CHAIRMAN said he had some doubts about the advisability of requesting the monitoring of the human rights situation in Haiti.

19. Ms. McDOUGALL said there were a number of issues that had been raised during the Committee's consideration of Haiti's previous report on which more information would be welcome, such as ethnic composition, socio-economic indicators and how they related to the marginalization of certain population groups, and judicial statistics on racist crimes. Furthermore, it would be useful to know whether legislation providing for impunity of offences committed during the coup d'état had been put into effect, particularly provisions relating to compensation for victims, and whether such legislation had resulted in any reconciliation.

20. Anyone who had ever been to Haiti could not fail to notice that the overwhelming majority of the population (95-98 per cent) was dark-skinned and lived in appalling poverty. The Country Rapporteur had drawn attention to the fact that 1 per cent of the population controlled around 40 per cent of the country's assets. So although there was no racial discrimination in national legislation, the stark reality of life was one of glaring inequalities, where the distribution of wealth was extremely uneven and closely linked to the colour of people's skin. The Government was unable to meet even the most basic needs of almost the entire population. The Committee must take note of the situation and monitor it closely in future to see whether it improved.

21. Mr. RECHETOV recalled that the multilateral intervention in Haiti dating back to 1994 had been prompted by concern about the human rights situation as well as about security. Yet in spite of the attention paid by the international community to such events and their consequences, it was still not clear whether the human rights situation in the country had really improved. Further monitoring of the situation was therefore needed. The Committee's work should not end with the report by the Country Rapporteur. The Committee should consider how to proceed, for instance by involving other United Nations bodies with greater insight into the situation. It must find a way of strongly urging the Haitian authorities to provide the requisite information.

22. Mr. van BOVEN agreed with Mr. Rechetov that the situation in Haiti warranted special attention; the concluding observations to be drafted by the Country Rapporteur on the subject should therefore go further than the standard formula used by the Committee when dealing with such cases in reflecting the concerns voiced by Committee members during the discussion. Regarding the need for monitoring and follow-up action, he suggested that the services of the Organization of American States currently operating in Haiti might be enlisted in helping the Committee to re-establish a dialogue with the Haitian authorities.

23. The CHAIRMAN, speaking in his personal capacity, concurred with much of what had been said so far, save for the latter suggestion by Mr. van Boven. Moreover, the implications of the Committee using confidential information collected by other United Nations bodies to fulfil its own mandate required further consideration. He also harboured doubts about the advisability of instructing the secretariat to seek information on the situation in a sovereign State which failed to comply with its reporting obligations without that country's consent. He would emphasize that the Committee was supposed to be investigating racial discrimination and not the human rights situation in general.

24. Mr. YUTZIS endorsed Mr. van Boven's comments on the need for the Committee to give special consideration to the case of Haiti, which should be reflected in its concluding observations. The Committee must explore different ways of obtaining more information on the country. To his recollection, the secretariat had been requested by the Committee in the past to provide such information on countries under special circumstances.

25. Ms. McDOUGALL said that the Committee needed to be rather more flexible concerning its sources of information in dealing with countries which faced a real crisis situation, particularly when, like Haiti, they enjoyed a long-standing relationship with the United Nations and its subsidiary bodies. She was aware that the High Commissioner for Human Rights had recently concluded a memorandum of understanding with the United Nations Development Programme (UNDP), which might provide useful socio-economic data. The Committee might wish to take advantage of such arrangements to exchange information with other United Nations bodies in future. It was not a question of seeking information without the consent of a sovereign State but rather of efficiently sharing between United Nations bodies information already available and collected with the knowledge of the host Government.

26. The CHAIRMAN, speaking in his personal capacity, maintained his viewpoint: a report by the Secretary-General of the United Nations on the situation of human rights in Haiti following a mission by an independent expert to the country (A/52/515) was available for consultation by the Committee, and he would be reluctant to request the secretariat to pursue the matter any further. It was true that in the past the secretariat had been requested by the Committee to seek additional information on certain matters. However, on such occasions briefings had taken place during private meetings and no official invitation had been extended to any special representatives or rapporteurs. Inviting such representatives to address the Committee, for instance, would not be in conformity with article 9 of the Convention. That being said, he would abide by the majority decision when the concluding observations on Haiti were submitted for final consideration.

27. Speaking as Chairman, he said he would take it that the Committee wished the Country Rapporteur to prepare draft concluding observations along the lines suggested by Mr. van Boven.

28. It was so decided.

CONSIDERATION OF COPIES OF PETITIONS, COPIES OF REPORTS AND OTHER INFORMATION RELATING TO TRUST AND NON-SELF-GOVERNING TERRITORIES AND TO ALL OTHER TERRITORIES IN WHICH GENERAL ASSEMBLY RESOLUTION 1524 (XV) APPLIES, IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION (agenda item 8) (CERD/C/343)

29. Mr. van BOVEN said that the Committee had not given substantive consideration to copies of petitions, reports and other information relating to Trust and Non-Self-Governing Territories since 1991. The reasons it had not done so since were twofold: time constraints and the number of urgent issues to be dealt with; and a lack of relevant input from the parties concerned. In the past the Committee had organized its work in three working groups which had dealt with the Territories in the Atlantic and Caribbean, the Pacific and Indian Oceans, and Africa, respectively.

30. Turning to article 15 of the Convention, he explained the purpose of the article and outlined the Committee's duties thereunder, as detailed in paragraphs 2, 3 and 4. Referring to paragraph 2 (a), he drew attention to the fact that there were no longer any Trust Territories as such and that the Committee had never received any copies of petitions from other United Nations bodies. Paragraph 2 (b) must have been drafted bearing in mind the close link between colonialist practices and patterns of racial discrimination.

31. As borne out by the summary records of the relevant meetings of that period, one of the main problems facing the Committee in fulfilling its mandate under article 15 was that the information generally provided by other United Nations bodies was inadequate; that situation remained unchanged. Among the reference documents provided by the secretariat were the Report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/52/23) (Part I) and copies of working papers submitted to the Committee relating to the 17 different Territories, listed in paragraph 5 of document CERD/C/343. The report of the Special Committee (A/52/23) contained only some brief references to the work of the Committee on the Elimination of Racial Discrimination and its Convention (paras. 85, 93-94 and 95-96) and to the Third Decade to Combat Racism and Racial Discrimination.

32. Some States parties provided information on the situation of independent or Non-Self-Governing Territories in the framework of their reporting obligations under article 9 of the Convention. For example, in its fourteenth periodic report (CERD/C/299/Add.9), the United Kingdom had included information on implementation of the Convention in 11 dependent Territories.

33. Of the working papers on the 17 Territories listed in the note by the Secretary-General (CERD/C/343), only 7 provided information that was related to the principles and objectives of the Convention.

34. The working paper on Bermuda (A/AC.109/2075) was the only document to contain a specific section on race relations. According to the paper, a Commission for Unity and Racial Equality had been set up in 1995. Details were provided on the powers, scope and function of the Human Rights Commission and on amendments to the Criminal Code to make "racial harassment" and "racial intimidation" criminal offences. A draft code of practice had been drawn up and would provide guidelines for the elimination of racial and gender discrimination in employment.

35. According to the working paper on American Samoa (A/AC.109/2080), the Territory's population was growing rapidly. The increase of approximately 21 per cent since the 1990 census was placing a strain on the public infrastructure. It was estimated that over 88 per cent of the residents of the Territory were ethnically Samoan.

36. The working paper on New Caledonia (A/AC.109/2074) stated that, according to the 1989 census, the population of New Caledonia comprised 73,598 known indigenous Melanesians known as Kanaks, 55,085 persons of European origin, of whom 35,000 persons, known as Caldoches, were descendants of the early settlers, 18,936 were Wallisians and Tahitians and 16,554 others, mainly Indonesians and Vietnamese.

37. The Matignon Accords of 1988 had provided for a 10-year period of economic and social development and a self-determination referendum which was supposed to be held in 1998. At the 8th meeting of the Special Political and Decolonization Committee (Fourth Committee) on 28 October 1996, the representative of France had stated that the Accords were based on three essential principles, namely the right of New Caledonians to self-determination, decentralization, readjustment and economic and social development of the Territory. The inhabitants of New Caledonia would exercise their right to self-determination in 1998 and determine the future of the Territory through a ballot. He had also referred to efforts to promote the cultural identity of the Melanesian community and had said that the agency for the development of Kanak culture played a leading role in that respect. On the question of France's position on the status of the Territory, he had stated that France maintained its reservations regarding the competence of the United Nations to discuss the subject. France had always considered that Article 73 of the Charter did not apply to New Caledonia, nor to the overseas departments and territories as a whole. France had always considered that the Charter left to each State concerned exclusive competence to determine which of the Territories it administered constituted Non-Self-Governing Territories. No General Assembly resolution had been able to amend the Charter on that point and give the Assembly competence in that area. In accordance with Article 2, paragraph 7 of the Charter, the question of New Caledonia was a matter which lay essentially within domestic jurisdiction.

38. A bulletin issued by the International Working Group on Indigenous Affairs referred to a kind of stalemate with regard to the holding of the referendum. It seemed that preparations for the referendum had been delayed by a long-running dispute over the future of the nickel industry which accounted for 90 per cent of New Caledonia's exports.

39. The working paper on East Timor (A/AC.109/2079) stated that in resolution 32/34 of 28 November 1997 the General Assembly had rejected the claim that East Timor had been integrated into Indonesia, inasmuch as the people of the Territory had not been able to exercise freely their right to self-determination and independence. The paper also referred to the alarming human rights situation in East Timor. For example, in August 1996, in Viqueque, East Timorese had demonstrated against government-sponsored Muslim migrants to East Timor and had burned a number of shops owned by those migrants.

40. In 1997, tne Secretary-General of the United Nations had appointed Ambassador Jamsheed Marker of Pakistan as his Personal Representative for East Timor. The United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights had dealt extensively with the question of East Timor. The Commission on Human Rights in resolution 1997/63 on human rights in East Timor expressed, inter alia, the Commission's deep concern at the policy of systematic migration of persons to East Timor. Prospects for improvements in the situation in East Timor had improved with the recent political changes. The Ministers of Foreign Affairs of Portugal and Indonesia had met under the auspices of the United Nations. According to the International Herald Tribune of 6 August 1998, the two sides were close to some kind of settlement. However, any solution required the

full participation of representative leaders of the people of East Timor. It was not enough merely for the Governments of Portugal and Indonesia to decide on the fate of the Territory.

41. The working paper on the Cayman Islands (A/AC.109/2081) made a rather puzzling assertion that one of the contributing factors to social and racial harmony was the level of migration.

42. The report on Western Sahara (A/AC.109/2087) stated that intensive efforts had been made to break the deadlock in implementation of the settlement plan and that there had been positive developments, including the release of prisoners and detainees and contacts between the Government of Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO). The report also contained the texts of several Security Council resolutions and details of the work of the Personal Envoy of the Secretary-General.

43. By way of conclusion, he stated that from the perspective of race relations, human rights and the right to self-determination, which were interlinked, particularly in a decolonization process, the situation in at least three Territories, New Caledonia, East Timor and Western Sahara, needed to be monitored. The Committee should continue to follow developments there. More energetic efforts were needed to clarify the reasons why no copies of petitions pursuant to article 15, paragraph 2 (a), were available. If there were copies, the Committee should be duly provided with them. In materials prepared by the secretariat for the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and, indirectly, for the Committee itself, more systematic attention should be given to human rights considerations in general and to matters that were directly related to the principles and objectives of the Convention. Furthermore, the Special Committee should, in its future reports, provide a systematic review of race relations in countries and Territories. In addition, States parties that were administering Powers of dependent Territories should be encouraged to include information on those Territories in their periodic reports.

44. The CHAIRMAN thanked Mr. van Boven for his analysis. Speaking in his personal capacity, he recalled that there had been considerable dispute about article 15 during the drafting of the Convention. In the Committee's early years, when it had met in New York, information on Non-Self-Governing Territories had been available from the relevant Secretariat department at Headquarters. The Committee had appointed a number of working groups to share the task of sifting through the voluminous documentation to find the small amount of information relevant to its mandate. Ever since the Committee had begun to meet only in Geneva, the flow of information from the secretariat had all but ceased.

45. He was glad that the Committee had at last resumed its consideration of the situation in Non-Self-Governing Territories, and was anxious that the impetus should not be lost. He suggested that Mr. van Boven's conclusions and recommendations should be fully reflected in the Committee's report to the General Assembly and that States parties should be asked to provide information about the Territories under their jurisdiction, in their periodic

reports or in some other way. He agreed that the three Territories mentioned explicitly by Mr. van Boven (East Timor, New Caledonia and Western Sahara) deserved particular attention.

46. Mr. DIACONU agreed that the Committee must consider the situation in Non-Self-Governing Territories, which were as liable to suffer racial discrimination as any other part of the world. However, it had no mandate to discuss the political future of those territories. The Committee should consider any petitions submitted by the populations of those territories, and any reports prepared by the secretariat should give due attention to the question of racial discrimination. In particular, the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples should give particular attention to the provisions of the Convention when drawing up its reports.

47. The issue might be included in the agenda of the planned World Conference against Racism, and the Secretary-General could be asked to prepare a report on racial discrimination in Non-Self-Governing Territories, with particular reference to the Convention. The Conference would then take note of the situation in its final declaration, which would be subject to follow-up measures.

48. Mr. WOLFRUM said that the Special Committee had included an item entitled "International Convention on the Elimination of All Forms of Racial Discrimination" in the agenda of its 1997 session. However, the Special Committee clearly needed to be encouraged to focus more closely on racial discrimination, since most of the working papers on individual Territories prepared for it by the Secretariat did not seem to mention that issue at all. States parties to the Convention should also be encouraged to include information about demographic composition and ethnic relations in the Territories under their jurisdiction in their periodic reports.

49. Mr. SHERIFIS said that it was much better to have one member analysing the issue, rather than the old system of consideration by working groups. He wondered why it was so difficult to find out whether petitions had been submitted by the population of one or another Non-Self-Governing Territory. There must be some department of the secretariat which was responsible for receiving such petitions and could provide the Committee with copies. He agreed with Mr. van Boven that all documentation prepared by the secretariat should take into account the provisions of the Declaration on the Granting of Independence to Colonial Countries and Peoples, and that, while the recent developments in the situation in East Timor were to be welcomed, the population of the territory must be closely involved in all future negotiations. As the Chairman had said, the Committee should adequately reflect its discussion about article 15 of the Convention in its next report to the General Assembly.

50. Mr. VALENCIA RODRIGUEZ recalled that, in its early years, the Committee had analysed the documentation submitted to it about the Non-Self-Governing Territories and had submitted reports to the General Assembly, but it had never received very much response. With time, the activities of the Trusteeship Council had also become less important. When the Committee had

begun to meet only in Geneva, it had received very few documents from the Secretariat. He agreed that the issue should be fully covered in the Committee's report.

51. Mr. YUTZIS also agreed with Mr. van Boven's recommendations. The Territories he had singled out deserved the Committee's particular attention because of the serious situation prevailing there.

52. Mr. SHAHI said that the Committee had never reported fully on the situation in Non-Self-Governing Territories because the documents at its disposal had contained so little information about racial discrimination. To his knowledge, the Committee had never received copies of petitions submitted by the Non-Self-Governing Territories, but nor did he think it had ever actually asked for them. Perhaps it should do so now.

53. Likewise, he did not believe that the Committee had ever asked the administering Power of any Non-Self-Governing Territory for information, as it was entitled to do under article 15 (2) (b) of the Convention. Some administering Powers, such as the United Kingdom, had provided information of their own accord. Morocco, whose report (CERD/C/298/Add.4) the Committee had considered the previous week, had also provided a great deal of information about Western Sahara. The Committee might wish to ask other administering Powers for information about those Territories. However, he could foresee considerable difficulties in the case of East Timor, since Indonesia was not a State party to the Convention. He further drew the Committee's attention to its General Recommendation XXI, in which it laid out its position regarding the right to self-determination of peoples. Any statement by the Committee on the situation in East Timor or Western Sahara would need to be very carefully drafted.

54. The CHAIRMAN, speaking in his personal capacity, said that, as far as he was aware, the Committee had often pressed the Secretary-General for relevant information about the Non-Self-Governing Territories, without success. The difficulty of obtaining such information surely supported the Committee's case for holding one of its sessions every year in New York. He suggested that the Committee might mention in the letter transmitting its annual report to the General Assembly that it had resumed its consideration of the situation with regard to racial discrimination in the Non-Self-Governing Territories, under article 15 of the Convention. It could also request non-governmental organizations to provide it with relevant information.

55. Speaking as Chairman, he said that the delegation of Gabon had informed the Committee that it could not be present for the consideration of its periodic report, which was scheduled for the next meeting. He suggested that the Committee should nevertheless hear the presentation of the Country Rapporteur, Mr. Nobel, and discuss Gabon's report (CERD/C/315/Add.1).

56. It was so decided.

The meeting rose at 1 p.m.